

<b>Notification of Non-Compliance With 37 CFR 1.192(c)</b>	<b>Application No.</b> 09/759,498	<b>Applicant(s)</b> BARNETT ET AL.	
	<b>Examiner</b> Fred I. Ehichioya	<b>Art Unit</b> 2162	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 19 November 2004 is defective for failure to comply with one or more provisions of 37 CFR 1.192(c). See MPEP § 1206.

To avoid dismissal of the appeal, applicant must file IN TRIPLICATE a complete new brief in compliance with 37 CFR 1.192(c) within the longest of any of the following three **TIME PERIODS**: (1) **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer; (2) **TWO MONTHS** from the date of the notice of appeal; or (3) within the period for reply to the action from which this appeal was taken. **EXTENSIONS OF THESE TIME PERIODS MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 1.192(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, pending or cancelled, or does not identify the appealed claims (37 CFR 1.192(c)(3)).
3. ☒ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 1.192(c)(4)).
4. ☐ The brief does not contain a concise explanation of the claimed invention, referring to the specification by page and line number and to the drawing, if any, by reference characters (37 CFR 1.192(c)(5)).
5. ☐ The brief does not contain a concise statement of the issues presented for review (37 CFR 1.192(c)(6)).
6. ☐ A single ground of rejection has been applied to two or more claims in this application, and
  - (a) ☐ the brief omits the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet presents arguments in support thereof in the argument section of the brief.
  - (b) ☐ the brief includes the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet does not present arguments in support thereof in the argument section of the brief.
7. ☐ The brief does not present an argument under a separate heading for each issue on appeal (37 CFR 1.192(c)(8)).
8. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 1.192(c)(9)).
9. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet

  
**MOHAMMAD ALI**  
**PRIMARY EXAMINER**

Continuation of 9. Other (including any explanation in support of the above items): Overview of Revised Rules of Practice Before the Board of Patent Appeals and Interferences

On August 12, 2004, the United States Patent and Trademark Office (USPTO) published revised Rules of Practice Before the Board of Patent Appeals and Interferences ("Board"). Effective September 13, 2004, Part 41 is added to Title 37 of the Code of Federal Regulations to replace the former regulations covering ex parte appeals (37 C.F.R. §§ 1.192-196), interferences (37 C.F.R. §§ 1.601-690), and inter partes reexamination appeals (37 C.F.R. §§ 1.961-977). New Part 41 is divided into five subparts:

Subpart A (General Provisions, §§ 41.1-20);

Subpart B (Ex Parte Appeals, §§ 41.30-54);

Subpart C (Inter Partes Appeals, §§ 41.60-81);

Subpart D (Contested Cases, §§ 41.100-158); and

Subpart E (Patent Interferences, §§ 41.200-208).

This paper provides an overview of some key aspects of the new Board rules.

Ex Parte Appeals

Amendments After Notice of Appeal

Under § 41.33(a), amendments submitted after the filing of a notice of appeal but prior to the filing of an appeal brief are governed by 37 C.F.R. § 1.116 (the usual after-final practice).

Any amendment canceling claims or rewriting dependent claims in independent form will be entered pursuant to § 41.33(b). All other amendments usually will not be entered (§ 41.33(c)).

An affidavit or other evidence filed after the date of filing an appeal and prior to filing an appeal brief may be admitted if the Examiner determines that the affidavit or other evidence overcomes all rejections under appeal and there is a showing of good and sufficient reasons why the affidavit or other evidence was not earlier presented (§ 41.33(d)).

Ex Parte Appeal Brief . 41.37(a)). Therefore, the amendment after final and appeal brief will not be entered.